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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,404	04/26/2001	Chester Struble	P-8032	9095

27581 7590 06/28/2005

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EXAMINER	
OROPEZA, FRANCES P	

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/842,404	STRUBLE, CHESTER	
	Examiner	Art Unit	
	Frances P. Oropeza	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5/18/04 (Amendment) & 7/27/04 (RCE)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-124* is/are pending in the application.

4a) Of the above claim(s) *1-59,65-83 and 90-124* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *60-64 and 84-89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Evaluation

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. The Applicant's submission filed on 7/27/04 has been entered.

2. The Applicant's Petition, filed 11/4/04, to revive an abandoned application was granted on 4/13/05.

Claim Rejections - 35 USC § 102

3. Claims 84-88 is rejected under 35 U.S.C. 102(e) as being anticipated by Wentkowski et al. (US 6430439). Wentkowski et al. disclose a system for collecting biventricular cardiac sense and pace data including a sensing means, a means for determining which ventricular chamber the conduction sequence originated in and which ventricular chamber it propagated to, and a means for recording the determined information in a memory (abstract; col. 1 @ 5-7, 26-39 and 46-51; col.1 @ 57 – col. 2 @ 6; col. 2 @ 27-34, 54-56 and 63-66; col. 3 @ 15-17 and 21-31; col. 8 @ 10-33; col. 9 @ 62-65). Note that the concept determining the distribution of ventricular to ventricular conduction amounts to an intended use limitation of which Wentkowski et al. performs or is inherently capable of performing.

As to the teaching of "determining which ventricular chamber a conduction sequence originated in and which ventricular chamber the conduction sequence is propagated to", Wentkowski et al. teach a method of operating a cardiac pacemaker by providing sensing and pacing capability in each of the two ventricular cardiac chambers (col. 2 @ 52-54 and 63-66), monitoring the cardiac sensing and pacing activity in an orginating ventricular chamber and monitoring the sensing and pacing response in the other ventricular chamber, providing pacing as needed when the conduction sequence is not properly propagated (col. 3 @ 22-31; col. 7 @ 2-49), and recording the data of the electrical activity of the ventricular chambers (col. 8 @ 10-17).

Claim Rejections - 35 USC § 103

4. Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wentkowski et al. (US 6430439) in view of Mower (US 6146586). As discussed in paragraph 3 of this action, Wentkowski et al. disclose the claimed invention except for a means for delivering antitachycardia pacing.

Mower teaches pacing therapy using overdrive pacing/ antitachycardic pacing for the purpose of providing a treatment to overcome the pathological cardiac rhythms/ conduction delays characterized by variable/ intermittent rate and/or ectopic foci often associated with congestive heart failure. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used antitachycardic pacing in the Wentkowski et al. system in order to provide a treatment that prevents potentially life threatening ventricular tachycardia (col. 1 @ 16-38; col. 4 @ 13-59).

5. Claims 60-64 and 84-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al. (US 6597951) in view of Wenkowski et al. (US 6430439).

Kramer et al. disclosed a system and method for setting the operation parameters of a cardiac rhythm management device in which a plurality of parameter optimization algorithms are available to treat conduction disorders. A measured feature is the ventricular conduction sequence (abstract; figure 1; col. 2 @ 12-41; col. 3 @ 34-39; col. 4 @ 23-34; col. 5 @ 60-62; col. 6 @ 1-11, 17-20 and 30-39; col. 7 @ 3-24; col. 9 @ 21-42).

As discussed in the previous paragraph of this action, Kramer et al. disclose the claimed invention except for determining the conduction disorder based on the relative distribution of the conduction sequences.

Wenkowski et al. teach device control using a histogram to determine event frequency for the purpose of defining the appropriate therapeutic response. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used a histogram to determine event frequency/ relative distribution of the conduction sequences in the Kramer et al. system in order to utilize a proven means of data collection that enables optimization of the selection of the therapeutic stimulation response to correct the conduction defects (abstract; col. 1 @ 5-7, 26-39 and 46-51; col.1 @ 57 – col. 2 @ 6; col. 2 @ 27-34, 54-56 and 63-66; col. 3 @ 21-31; col. 8 @ 10-33).

6. Claim 89 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al. (US 6597951) in view of Wentkowski et al. (US 6430439) and further in view of Mower

(US 6146586). As discussed in paragraph 5 of this action, modified Kramer et al. disclose the claimed invention except for a means for delivering antitachycardia pacing.

Mower teaches pacing therapy using overdrive pacing/ antitachycardic pacing for the purpose of providing a treatment to overcome the pathological cardiac rhythms/ conduction delays characterized by variable/ intermittent rate and/or ectopic foci often associated with congestive heart failure. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used antitachycardic pacing in the modified Kramer et al. system in order to provide a treatment that prevents potentially life threatening ventricular tachycardia (col. 1 @ 16-38; col. 4 @ 13-59).

Other Prior Art Cited

7. The prior art made of record and not relied upon is considered pertinent to the Applicant's disclosure. US 5720768 to Verboven-Nelissen teaches determination of propagation of the ventricular signal (figure 5A).

Statutory Basis

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
6/20/05

Angela D. Sykes

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